

# ***You Can Help***

When someone with mental illness has been arrested

**A Guide for Family Members and Advocates in Tennessee**

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425 5<sup>th</sup> Avenue North, Third Floor, Nashville, TN 37212  
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Web address: <http://www.state.tn.us/mental>

OR

NAMI Tennessee  
5410 Homberg Drive  
Knoxville, TN 37919  
Telephone: (800) 467-3589 Fax: (865) 602-7809  
Web address: <http://www.tn.nami.org>

**Need Mental Health Services?**

For a directory of mental health services in Tennessee:  
<http://www.state.tn.us/mental/reslinks.html>

## Introduction

Police, sheriffs, courts and jails are guarding public safety and maintain justice. They are not set up to provide care to people with mental illness. When you try to help someone with mental illness who is in trouble with the law, it can be confusing, frustrating and frightening. You need information on crisis prevention, arrest, bonds, court, jail, and release. You need to know how to get someone into mental health treatment. You need to know who can help, how you can help, and what you cannot or should not do.

This document will guide you through the criminal justice process in Tennessee. There are suggestions for advocates in each “You Can Help” section. Because what actually happens differs from place to place across the state, the Resources Section at the back of the book has local information. Every effort has been made to give correct information, but this book only offers general advice. If you need to know more, contact a legal professional or one of the mental health agencies listed in the Resource Section of this book.

## Crisis Prevention

The best way to deal with the criminal justice system is not to get involved at all. Family members, friends and advocates sometimes reach a point where they are so worried about the person with mental illness or so concerned about their own safety that arrest and jail seem like the best choices. But jail is a terrible place for someone with mental illness. It is crowded, loud and filled with people who behave badly. Getting a good night's sleep in jail is not easy. Getting medications or treatment is slow and difficult. For the person who is paranoid or hearing voices, jail can seem like torture. It is best to do whatever you can to keep the person out of jail unless he or she commits a serious crime.

The key is planning and communication. Developing a *mental health crisis plan* is the first step. The second step is to learn how to *communicate* with a person who may go into a mental health crisis. A mental health crisis is when someone becomes a danger to him/herself or someone else, or causes a public disturbance because of mental illness.

## Crisis Planning

A crisis plan helps a person with mental illness plan what help to get in case he or she cannot make good decisions due to a mental health crisis. A mental health crisis is where the person may be dangerous to himself/herself or others, or may be going down hill to the point where safety is an issue. Planning is done when the person is feeling well and can make good choices.

- A crisis plan is developed *with*, not *for* the person who has mental illness. The person must be involved in developing the plan for it to work. The person may choose to involve the following people in crisis planning:
  - Key family members;
  - Close friends;
  - Case manager;
  - Psychiatrist, therapist or nurse;
  - Probation or parole officer.
- A crisis plan lays out:
  - Early warning signs: what the person is like when a crisis is beginning;
  - What can be done by the person and others to clear up the crisis before it starts;
  - What help to call if a crisis starts to happen;

- Name and contact information for the person's psychiatrist and other mental health care providers;
- Types of medications and other treatments that have worked or not worked in the past; and
- How to take care of the person's responsibilities, home and possessions if he or she has to go to hospital or jail.
- You can talk to your lawyer about a "living will" or a "durable power of attorney for healthcare" to give a family member the ability to make decisions for a person who is not able to make decisions for himself/herself.
- In Tennessee, you can help the person complete a document called a, "Declaration for Mental Health Treatment," to describe what treatment the consumer wishes in case of a mental health crisis. No lawyer is required to complete this document. For a copy of the form contact the Tennessee Department of Mental Health and Developmental Disabilities: (615)532-6767.
- A crisis plan cannot be enforced in court if someone does not do what it says, but it will help everyone follow the person's wishes as much as possible.

## **Communication**

If you are close to someone who has serious mental illness, it is a good idea to take some time to learn communication skills that work in crisis situations. Organizations like the National Alliance for the Mentally Ill (NAMI), the Mental Health Association and your local mental health agency have classes, literature and other resources to help you learn. You may be able to get the person's therapist or counselor to help your family learn communication skills.

*You Can Help* when the person is in crisis:

- A person in crisis wants to be heard. Some of the problem will clear up if you take the time to listen.
- A person in crisis is often confused. He or she may not make good choices. Listen to what he/she is saying and help him/her consider what will happen if unwise choices are made. DO NOT yell or scold. That will only make things worse.
- A person in crisis may see or hear things, or may believe things that are not true. Listen for the feelings that go along with what he or she says and ask about them. Do not either agree or disagree with what the person sees, hears or believes.
- If you think the person is at immediate risk of hurting him/herself, or others call the police. Stay around to help the person after the police arrive. You can be a vital link to help the person get services and stay out of jail.

## **Law Enforcement**

There are two types of law enforcement officers that come to the scene of a crime. Larger cities have a police force while smaller towns and rural areas have sheriff's officers. Some cities have specially trained police officers who answer calls where the offender or the victim is reported to have mental illness.

If you have to call the police, let them know that the offender has mental illness. The officers may be able to bring special help to the scene of the crime.

### **When the Police Come**

If the police have arrived, and even if they have the offender in handcuffs, you can still help. Police can decide who to arrest, who to take to the hospital and who to ignore.

Common reasons for arrest:

- The offender is a danger to him/herself or someone else;
- The offender has damaged property;
- The offender is suspected of carrying illegal drugs or weapons;
- The offender is drunk;
- The offender is trespassing.

*You Can Help* when the police come on the scene:

- Unless a serious crime has been committed, ask the police not to arrest the offender.
- If you can help the offender get to treatment, let the police know. They may not arrest the offender if there is hope of treatment that will help him or her stay out of trouble.

**Pre-Arrest**

If the offender is a danger to him/herself or others due to mental illness, but has not committed a serious crime, the police can take him/her to a hospital emergency room or mental health assessment facility. At most of these places the police must wait with the offender until assessment is done.

Because assessments take so long:

- Police often will not arrest someone if there is a good reason not to;
- If the offender is arrested, they will probably take him/her to the county jail or the police station to be booked.

**Arrest**

The person who is arrested is taken into legal custody by the police. After arrest, the police can search the person. If evidence of any other crime shows up, such as drugs or stolen goods, those crimes will be added to the charges. If the offender causes problems while being arrested, "resisting arrest" may be added to the charges.

*You Can Help* if the offender has been arrested:

- Ask for the name and badge number of the arresting officers.
- Ask for the arrest number. This helps you find where the offender will be held before the first court appearance. In smaller counties there is usually only one jail.
- Ask if the offender can be let out to come back to court later. If you can promise to bring the offender to court, the police might be willing to release him or her.
- For contact information on holding facilities and other useful resources, see the Resources Section of this book.

The arrested person will be charged with a misdemeanor or a felony.

- A misdemeanor is a less serious crime that carries a sentence of no more than 11 months and 29 days. If the defendant is found guilty of a misdemeanor he or she will serve time in a county jail, be released on probation and/or pay a fine.
- A felony is a serious criminal charge that carries a sentence of a year or more. If the defendant is found guilty of a felony, he or she will serve time, depending on the length of the sentence, either at a county jail, workhouse or state prison.
- Each type of charge, whether misdemeanor or felony, has a maximum sentence.

Even if the defendant is not found guilty of the crime, he/she may spend quite a bit of time in jail while the courts decide what to do.

Why are you trying to keep the defendant out of jail? You might think it would be a good idea for the defendant to spend time in a place with “three hots and a cot”, but you would be wrong.

- People with mental illness spend longer in jail than other people for the same charges;
- Jails are not set up to provide treatment. It can be difficult to get medications or treatment of any kind while in jail;
- Jails are noisy and crowded. It is hard to get a good night's sleep, which is so important for a person who is trying to recover from a mental health crisis.
- Other inmates and even jail staff can be cruel to a person with mental illness.
- There is no promise that the defendant will get mental health services upon release.
- Bottom line: it is important to keep the defendant out of jail if you can.

### **Arrest Warrants**

An arrest warrant is a written order from a judge. Not every arrest involves a warrant. It may be that an officer observes a crime and arrests the offender on the spot. Warrants start the criminal process and are used to bring the defendant to court.

An arrest warrant may be issued if the defendant:

- Does not appear at a required court hearing;
- Does not pay a fine;
- Does not do community service ordered by the court;
- Does not do what is required for probation, parole or community corrections;
- Breaks the law in some other way.

If the defendant does not clear up a warrant s/he may have to go to jail. How quickly the police follow up on a warrant depends on how serious the offense was. There may be police at the defendant's door that evening if the defendant misses a court date or violates probation. For a fine, it may be a few weeks or longer. Even if the police do not come, a warrant does not go away. It is important to clear up a warrant because:

- If the police ever pick up the defendant for any reason, the warrant will be held against him or her.
- Social Security checks up on warrants. The defendant may get a letter stating that his or her check will be cut off because the defendant is a “fugitive” from the law.
- It is stressful for the defendant to have a warrant hanging over his/her head. Stress affects mental health.

How to clear up a warrant:

- Go to the court that issued the warrant, apologize and give an excuse if there is one.
- Agree to correct the rule that was broken and take the punishment.

Those who go back to the court on their own may get in less trouble. If the defendant has a good excuse and the warrant was issued only a day or two ago, the defendant may not be in any more trouble. If there is no good excuse, the defendant will be in more trouble than before the warrant was issued. That could mean:

- Paying more fines or higher bail;
- Getting a longer probation sentence;
- Going to jail or prison.

*You Can Help* the person who has been issued an arrest warrant:

- Make sure there really is a warrant. Call the court or the sheriff's department. You will not have to tell them where the defendant is, just that he or she plans to come in and clear up the warrant. If it is a violation of probation or parole, call the probation or parole officer.
- Find out when and where the defendant should appear. Make sure you get the right courthouse or office. Get directions or bus information and ask about where to go once you are in the courthouse.
- Contact the defense attorney if the defendant has one. The attorney may be able to help the defendant clear up the warrant. Let the attorney know if there is a good excuse and whether you can go to court with the person.
- Go to court. Get to the courthouse a little early; go through security. Explain that you are there to clear up a warrant and ask where to go. If the lawyer cannot meet you, ask the court clerk for a lawyer who can "stand up" on the case when it is called. Help the defendant explain the situation to the lawyer. Prepare for a long wait. Remember that being there as an advocate may make the difference between jail and a second chance; or
- Go with the defendant to the probation/ parole office. Advocate for the defendant, letting the officer know about good excuses or if there is some reason why the defendant cannot meet the conditions of probation or parole such as hospitalization, confusion due to mental illness, poverty, etc. This is another situation where having an advocate makes a big difference.

## Booking

If the defendant is taken into custody, the next step is "booking" where information is obtained for the court and a decision is made whether to keep the defendant in jail until the first court appearance or release him or her with instructions to appear at a later date. Some districts in Tennessee have a "night court" where this decision is made, while other districts use the police station or the sheriff's department. The defendant will spend a lot of time waiting in a noisy, uncomfortable place.

*You Can Help* the defendant who has been taken into custody:

- Find out where the defendant is held. It might take several calls. Keep on trying;
- Go to the booking facility or at least call;
- Comfort the defendant and let him or her know you are there to help;
- Help the defendant give true, clear information to the booking officer;
- Tell the booking officer that the defendant is in mental health treatment and needs medication. Give contact information for the defendant's case manager and doctor or therapist;
- Ask the defendant to sign two "consent to release information;" one form giving you permission to contact his or her mental health care providers to let them know the defendant is in jail; and the other giving the mental health providers permission to talk to the jail staff about the person's treatment needs. Consent forms are available at mental health agencies.
- After the defendant has signed consent releases, get in touch with the defendant's mental health treatment providers. Tell the case manager and/or psychiatrist what happened, where the defendant is and what the defendant may need. Ask for their help;
- Take a supply of the defendant's medication. Make sure you bring it in the original bottle from the pharmacy. You may or may not be able to give it to the jail staff if the defendant is held in jail. You cannot give it directly to the defendant;



- Offer to help the defendant get to the court date if booking officers or the night court commissioner talk about release on bond;
- Get in touch with the defendant's lawyer. The sooner the defense attorney gets word about the case, the better.

### **Jail: Custody Before the First Court Hearing**

If the defendant has been charged with a serious crime or there are other reasons to think he or she needs to be in jail until the first court date, the defendant will be jailed.

*You Can Help* the defendant who is detained in jail:

- Find out what the rules are about visiting the defendant;
- Find out whether you can bring the defendant's medications;
- Give a list of the defendant's current medications to the jail staff;
- Let the jail staff know the defendant needs mental health care. They may place the defendant in one of the cells where inmates get more medical care;
- Let the jail staff know if the defendant is suicidal or has been in the past.

### **Bail Bond**

If the defendant is charged with a less serious crime, and has enough support in the community, and is not considered a risk to run away, he or she may be released on bond. Bond is an amount of money paid in order to make sure the defendant comes back on the court date. This is called "posting bond". If the bond is too high, the defense lawyer can file a motion asking that the amount be lowered. If the defendant has more than one bond, make sure the lawyer knows about those too so the motions can all be filed at once.

In deciding the amount of bond, the Court will look at:

- The type of crime;
- Evidence against the defendant;
- Criminal record;
- If the defendant has failed to appear in court before;
- How long the defendant has lived in the area;
- Family and friends in the area;
- Employment, and
- How long the defendant has had that job.

How the bond is posted is up to the defendant. Types of Bond:

- **Cash Bonds:**  
The defendant or someone else puts up the entire amount. The money will be returned if a receipt is turned into the Criminal Court at the end of the case. If you or anyone besides the defendant posts a cash bond, be sure that the receipt is paid to the person who actually paid the money, not the defendant. If the receipt is made out to the defendant, the fines and court costs will be taken out of the bond money before any money is refunded.
- **Bonding Company:**  
Generally, bonding companies will charge 10% of the bond plus \$25.00. So if the bond is \$1,000.00, the bonding company will charge \$125.00. This money is not refundable. Some bond companies will allow the defendant to pay some of the fee weekly until it is all paid.

- Property Bonds:  
To use a property bond the defendant must own land without a mortgage or lien on the property. The property title can be taken to the court clerk's office and they will allow the defendant to make bond. If the defendant does not show up in court, he or she loses the property.

OR:

- Pre-Trial Release: *(only available in some counties)*  
The only type of release where the defendant is not required to post money or property. If there is no criminal record and several other conditions are met a pre-trial counselor may be assigned and the defendant will be released from jail and required to report once a week. Pre-trial release is not often granted.

## General Sessions Court

General Sessions Court is the first court cases go to in the criminal justice system. Misdemeanors go no further than General Sessions Court. Felonies will be looked at to see if they should be reduced to misdemeanors and if other preparations need to be made to get the case ready for Circuit or Criminal Court. For instance, the prosecutor or defense may need to gather more evidence, may need to subpoena witnesses, or may need to order a psychiatric evaluation.

### Getting a Defense Attorney

The defendant may need your help to get an attorney as soon as possible. Everyone has a right to represent himself or herself in court, but it is a better idea to hire an attorney. In court, many people are seen and most are not given much time. Your job as an advocate is to get the court to pay attention to the defendant's special needs. The defense attorney can do that.

- The defense attorney is the only person in the court whose job it is to look out for the needs and rights of the defendant.
- You will not be able to talk to the judge, except maybe briefly in the courtroom and then only to respond to questions.

Bottom line: If you have information that you think will help the case, *a/ways* go through the defense attorney.

You should contact the attorney:

- To get information about the case:
  - The police and prosecutor's version of what happened;
  - What the defendant would like to do (plead guilty, go to trial, get a disposition that includes mandatory drug or alcohol treatment); and
  - What the lawyer thinks is likely to happen with the case.
- To give needed information:
  - The defendant's psychiatric problems and history;
  - Contact information for family and mental health providers;
  - Resources available to the defendant to help him or her stay stable and safe; and
  - Names and addresses of any witnesses.
- To get the best possible deal for the defendant in court.

Note: The defense attorney does not have to talk to you. The defense attorney may talk to you if he or she thinks you can help the defendant's case.

***You Can Help*** the defendant get legal counsel:

- Help the defendant hire a lawyer. If the defendant has a family lawyer, help the defendant make the phone call.
- If he or she cannot afford to hire a lawyer, contact the court to get a public defender. The defendant has a right to an attorney.
- With permission from the defendant, meet with the defendant and the defense attorney to help supply details of the case,
- Make sure the defense attorney understands what sort of assistance you can give to help the person stay out of trouble in the community.

**How do you get an attorney if you don't have money?**

Tennessee has two kinds of court-appointed attorneys, public defenders and court appointed counsel.

- Public defender: Works for people who cannot afford to pay.
- Appointed counsel: a lawyer in private practice who is assigned by the court to defend a person who cannot afford to pay. Some of these lawyers may spend all of their time doing criminal defense, or they may only take a few cases.

Caution: The lawyer is defending the defendant's *legal* rights. The lawyer may not do what you think is best. Most lawyers who defend poor people are *very* busy. Your job as an advocate is to convince the attorney that this is a special case and to help put together a plan for keeping the defendant stable and out of trouble. Sometimes you will find it difficult to work with the defense attorney because he or she:

- May not return your phone calls;
- May not listen to what you have to say;
- May interrupt you and seem rude;
- May not agree with what you think is best;
- May be unwilling to talk with you at all.

**Can you fire a free attorney?**

Yes and no. If the defendant wants a new attorney, he or she can ask the judge to "relieve" the lawyer and appoint a different one. The defendant would have to:

- Tell the current lawyer he or she wants a change of attorney and the reasons why.
- The lawyer must make the request of the judge at the next court date.
- Sometimes the judge will grant the request and sometimes not. The judge may think:
  - The lawyer is doing a good job, or
  - The case has gone too far to switch, or
  - The defendant has made this request before and is not being reasonable.

If you, as an advocate, are unhappy with the lawyer but the defendant is satisfied, there is nothing you can do. The lawyer works for the defendant, not for you. Even if the family is footing the bill, the lawyer's only responsibility is to represent the defendant.

## **Appearing in Court**

Any court appearance can be confusing. If the defendant does not appear, the judge may issue a warrant for arrest. Then he or she will go to jail. If the defendant does not behave well, he or she may be found in contempt of court, which may add another charge and more jail time.

*You Can Help* the defendant appear in court:

- If you get a chance, help the defendant understand what is going on and how to behave.
- The defendant must:
  - Go to court at the correct date and time unless the defense attorney says not to appear;
  - Allow extra time to find the right building and court room;
  - Arrive early in case the attorney needs to discuss the case;
  - If not able to appear for good reason or if late, notify the defense attorney and the bondsman;
  - Only speak in court if asked by the defense attorney, the prosecutor or the judge;
  - Only answer the questions that are asked; no more, no less;
  - Address the judge as “your honor”; and
  - Speak politely, not in anger;
  - Urge the defendant to dress neatly and appropriately, no revealing or sloppy clothes.

## **The Legal Process for Misdemeanors: First Court Hearing**

The misdemeanor process takes place in a General Sessions court. The defendant must go before a judge within 72 hours of arrest. At this first hearing, the judge tells the defendant what charges have been brought against him or her and makes a decision on whether the defendant can be released on bond or sent to jail. The judge decides whether there is probable cause to believe that the crime has been committed, and the defendant committed the crime.

- If the judge decides there is not enough probable cause, the case will be dismissed;
- If the judge decides there is probable cause, a trial will be set in General Sessions court.

## **Trial for Misdemeanor Charges**

Most misdemeanor trials are ‘bench trials’ where decisions are made by a judge and there is no jury. In some limited cases there may be a jury trial for a misdemeanor charge. The defendant must have a attorney. If he or she cannot afford a attorney, the court will appoint a defense attorney. The defendant may be asked to testify (speak in court) by the defense attorney.

This is how a bench trial usually goes:

- The charges are read;
- The defense attorney responds to the charges and enters a plea;
- The district attorney gives an account of the crime and the events surrounding it;
- The prosecuting attorney (usually the district attorney or ‘DA’) presents evidence that the defendant should be found guilty;
- The defense attorney presents evidence that the defendant should be found not guilty;
- Each attorney responds to the other’s points;
- The judge makes a decision.

The judge may decide the case. This is called a “disposition.” The defendant may be found:

- Not guilty, acquitted of the crime and the case is closed,
- Guilty, and given a sentence, such as:
  - A fine;
  - Community service;
  - Jail time;
  - Probation;
  - A combination of the above.

### **The Legal Process for Felonies: First Court Hearing**

As with misdemeanors, the defendant must go before a judge within 72 hours of arrest. At the first hearing, the judge tells the defendant what his or her charges are, and makes a decision as to whether the defendant can be released on bond or must go to jail. The defendant does not testify at the first hearing.

### **Preliminary Hearing**

At this hearing, the judge will look at whether the case should be settled, the bond should be reduced, the charge should be reduced to a misdemeanor or if the case should keep going to the next level. The defendant will not be allowed to testify at the preliminary hearing. In serious cases, the state will demand a preliminary hearing and there will not be a chance to settle the case or get the bond reduced. In that case, the only things the judge will look at are if there is “probable cause” to believe:

- That the crime was committed,
- That the defendant charged was the one who committed the crime.

Decisions about “probable cause” can be made at several points in the legal process, but each time there must be stronger evidence for the process to continue. If the judge decides there is probable cause, the case will be sent, or “bound over” to the Grand Jury.

Possible next steps include:

- Plea bargain (or plea agreement): case settled. The district attorney agrees to reduce the charge, or dismiss some or all charges, or recommend a sentence in return for a plea of guilty or “nolo contendere” (no contest).
- Case dismissed: Cases can be dismissed for a number of reasons:
  - People who were told to come did not appear to testify. The case may be dismissed this point. Otherwise there may be a “continuance” if the judge deems that the attorneys can get the people to come at a later date.
  - There is not enough evidence. The judge may decide that there isn’t enough information to show that the defendant committed the crime. The case may stop when it is dismissed.
  - The charges are “retired”. This means that the charge will not be actively pursued. The defendant will not face charges at this time but charges can be brought up again if the defendant commits a new crime.

There are factors that make the charge more complicated. Two examples:

- A person who is mentally ill and a danger to self/others may be sent for involuntary commitment to a psychiatric hospital. After the defendant has stabilized, the defendant will return to court unless the charges have been dropped.
- The court may order an evaluation for competence to stand trial or for use of the “not guilty by reason of insanity (NGRI)” defense. At that point, a “forensic evaluation” will be court-ordered.

- Apart from NGRI cases, a forensic evaluation may be ordered if the attorney or the judge feel it is necessary.

At the end of the preliminary hearing, several things may happen:

- The judge may decide there is not enough “probable cause.” Either there is not enough evidence that the crime has been committed or that this defendant committed the crime. The charges are dismissed.
- The case may be “bound over to the Grand Jury”.
- There may be an “information agreement”, a written contract between the defendant and the district attorney that the defendant will plead guilty to the charge in Criminal or Circuit Court, and the DA will offer an agreed-on sentence. If there is an information agreement, the case will skip the Grand Jury and will go directly to Criminal or Circuit Court.

### **Bound Over to Grand Jury**

If the case is “bound over” the defendant may:

- Be released either with or without bail, and told to come back for another court hearing;
  - The defendant has to come back for the next court date or be thrown back in jail. If that happens, the court will be more strict with the rest of the case;
- Go to or stay in jail pending the next hearing;

There are several things to think about.

- It takes months or even years for a case to get through Circuit or Criminal Court;
- Meanwhile the defendant may sit in jail;
- In jail, the defendant may not get treatment or the right medications;
- The defendant may lose his/her housing or job during that time;
- If the defendant is found guilty, the charge will go on the criminal record anyway; and
- If the defendant does not have a public defender the whole process will cost a lot of money.

*You Can Help* the defendant decide what to do:

- Listen to the defendant’s plans for the case;
- Help the defendant think about what might happen if the case goes to trial; and
- Help the defendant write down questions for the attorney.

### **Grand Jury**

This is a group of thirteen people that are chosen by the government to look at all of the current criminal cases. The Grand Jury only decides “probable cause”:

- Was the crime committed?
- Is it likely that this person is guilty?

Three ways cases can get to the Grand Jury are:

- Bound over from a preliminary hearing;
- Sealed indictment; and
- Direct presentment.

The Grand Jury just looks at the evidence presented by the prosecution. There are no witnesses. Neither the defendant nor the defense attorney appears. The case can only go to Criminal or Circuit Court after the Grand Jury returns a decision, which can take a long time. The decision may be:

- No true bill: There is not enough reason for the case to go forward; or
- Indictment: There is probable cause to believe the defendant is guilty.

## **Circuit or Criminal Court**

Felonies are tried in Circuit or Criminal Court. Urban areas have a Criminal Court while in most other areas criminal cases are heard in Circuit Court. If the case goes to Criminal or Circuit Court, much of what happened in General Sessions Court is repeated.

### **Sealed Indictment**

If the defendant is charged with a serious crime and there is a reason to take the case straight to Criminal or Circuit Court, the charge may be placed in a “sealed indictment”. In those cases all of the evidence is gathered and the case goes to the Grand Jury with no preliminary hearing. Sealed indictments are frequently used for drug cases.

### **Direct Presentment**

Direct presentment is when the prosecutor goes directly to the Grand Jury through a sealed indictment. If a General Sessions judge dismisses a case, at the first hearing, the prosecutor may seek a direct presentment.

### **Arraignment**

If the defendant is indicted by the Grand Jury, he or she must appear before the Criminal or Circuit Court to hear the charges and enter a plea. At that point a public defender or court appointed attorney is assigned if the defendant does not already have a attorney.

### **Preparing the Case**

It will take several weeks for the case to get from the arraignment to the settlement docket.

During that time, the defense attorney may do some of the following:

- Obtain a copy of the indictment from the court;
- Enter a plea of “not guilty” for the defendant;
- File a “discovery motion” to get witness lists, statements, reports and other information;
- Get information about the case from the defendant; file motions to get evidence and talk to witnesses. The attorney needs to know as much as possible about the case to prepare a good defense. Extra time spent getting the case ready may save the defendant years in jail.
- Discuss with the defendant:
  - The charges;
  - All possible defenses;
  - Strengths and weaknesses of the case;
  - What the defendant will testify at the trial, or whether to testify at all;
  - Chances of success if the case goes to trial;
  - Possible punishments for the crime with which the defendant is charged.
- Talk to the defendant and the district attorney to see if they can agree on a settlement. This can be done only if the defendant wants it.

*You Can Help* the defendant prepare for trial:

- Encourage the defendant to be completely honest with the defense attorney;
- Provide information requested by the defense attorney.

### **Settlement Docket or Settlement Day** *(only in some counties)*

This is a court appearance where the defense and the prosecuting attorney try to settle the case to keep it from going to trial. The defendant has a final chance to enter a plea agreement (or plea bargain), for a lighter sentence. For example, the DA may offer to recommend some time behind

bars and some on probation or parole. The defense attorney will have worked out the plea agreement with the defendant and the DA before the case gets to the Settlement Docket or settlement day. The defense attorney can offer advice, but the decision of whether to accept a plea bargain must be made by the defendant. If no settlement is reached, the case goes to trial.

### **Continuance**

If the case is not ready for trial, it may get a “continuance” if:

- More evidence needs to be gathered;
- People who are needed are not there, such as the victim or victim’s family.

Once it is ready, the case will either go back to the Settlement Docket or on to trial.

### **Trial**

The diagram on the next page shows the jury trial process. The defense attorney will work with the defendant about:

- Whether the defendant will testify. The defendant can, but does not have to speak in his/her own defense at the trial;
- What questions the DA and the defense attorney might ask and how to answer;
- Which witnesses to call and what evidence to present.

The defense attorney and the defendant must be ready for the trial on the date it is set even though it might not be tried on that date. The defense may not know until court starts that the case will not be tried that day.

### **Appeals**

Even after the judge has made a decision, it could be changed later if new information comes out or if there were errors in the trial. If that happens, the defense attorney files a motion to appeal the decision and another hearing or trial is set. An appeal will only help if the judge did not follow the law or the person was prevented from exercising his or her rights. Because the Court of Appeal just reviews existing evidence, the defendant will not appear. If there is new evidence, the case will go back to trial. Appeals can be filed on a number of things during the legal process, including:

- To challenge a conviction of guilty;
- To change or shorten a sentence; and
- To get a new trial.



The Jury Trial Process	What Is Happening	Court Action	Prosecutor Action	Defense Attorney Action
Jury Selection	A group of 12 people from the community are chosen to decide whether the defendant committed the crime.	Asks jurors about their ability to sit on a jury.	Asks questions. May strike someone from the jury.	Asks questions. May strike someone from the jury.
Reading of Indictment	The charges against the defendant are read by the court clerk			
Defendant Enters Plea	The defense attorney responds to the charges and enters a plea.			Responds to the charges with a plea of "not guilty"
Opening Statements	The prosecutor and the defense each tell their account of events		Makes a statement about what they can prove.	Makes a statement about what they can prove.
State's Proof	The prosecutor presents the state's case that the defendant should be found guilty.	Judge rules on defense objections	Puts on witnesses and presents evidence of guilt.	Cross-examines witnesses and objects to evidence
Motion for Acquittal	The defense attorney asks that the defendant be found not guilty because there is not enough evidence.	Judge rules on the motion and can acquit.		Asks that the defendant be acquitted.
Defense Proof	The defense attorney presents the reasons why the defendant should be found not guilty.	Judge rules on prosecutor objections	Cross-examines witnesses and objects to evidence	Puts on witnesses and presents evidence of innocence.
Prosecution's Rebuttal	The prosecutor gives reasons why the defense has not proven that the defendant is not guilty.		Puts on witnesses and presents evidence to rebut the defense proof.	Cross-examines witnesses and objects to evidence
Closing Argument	Each side says what they think they have proven during the trial.		Makes a statement of what was proven.	Makes a statement of what was proven.
Jury Instructions	All jurors must agree on whether the defendant is innocent or guilty. If even one disagrees, a mistrial is declared. Another trial is set.	Judge instructs jury to decide innocence or guilt.		
Deliberation	Jury meets privately to decide.			
Decision	Jury announces decision of not guilty, guilty or hung jury	Judge dismisses case, sets sentencing hearing or re-trial.	If the case is dismissed re-tried, will keep gathering evidence.	If defendant is convicted, can file an appeal to a higher court.

## Evaluations for People with Mental Illness

### Forensic Evaluation

Forensic evaluation is not a short-cut to mental health treatment. It is the best-known type of court-ordered evaluation when the defendant has a mental illness. Judges and attorneys often go for a forensic evaluation when another type would be better. There are a few good reasons to order a forensic evaluation. They are as follows:

- To find out if the defendant's current mental illness prevents him/her from being "competent to stand trial." The legal term, "competent", does not mean that the defendant is making good decisions about his or her life. A person is "competent to stand trial" if he/she has:
  - The ability to cooperate with his/her attorney in his/her own defense;
  - An awareness and understanding of the proceedings; and,
  - An understanding of the consequences of the proceedings.
- To find out if the defendant was "not guilty by reason of insanity" (NGRI). To be found NGRI, two things have to be true:
  - The defendant must be found to have a severe mental disease or defect at the time of the crime; AND
  - Because of severe mental disease or defect, the defendant did not appreciate the "nature or wrongfulness" of the crime;
- NGRI is hard to prove.
- If a person is found NGRI, he or she will be evaluated for treatment in a state psychiatric institute for 60 – 90 days. After that time in the hospital, the defendant may be:
  - Committed indefinitely to the state hospital,
  - Released to seek out-patient treatment,
  - Released on "mandatory outpatient treatment" (MOT). That means the defendant must comply with a treatment plan or risk being arrested and thrown in jail.

There is a long waiting list for forensic evaluations, which means that the defendant sits in jail until his or her turn comes up. Even then, it can take 30 – 90 days for the evaluation to be completed after it has started. Bottom line: forensic evaluation is only good for its intended purpose.

### Mental Health Treatment

If the judge or the attorneys want to find out if someone has a mental illness and get him or her in treatment, there are several things they can do:

- Get written permission from the defendant to allow the defense attorney to contact the defendant's mental health agency, psychiatrist, or other mental health professionals. This written permission is called "consent to release information." With a consent to release, the court can get information about:
    - Diagnosis;
    - Medications and other treatment;
    - Whether the defendant was stable when taking medications as prescribed; and
    - Reasons why the defendant might not be in treatment any more.
- The defense attorney can ask the court to require the defendant to comply with treatment as a condition of probation. If the defendant is sentenced to jail or prison, the court can give the treatment information to the correctional medical staff.
- If the defendant has mental health treatment providers but is off medications or not going to treatment, and if he or she breaks the law, the court can require participation in treatment as a condition of probation or parole.
  - If the defendant seems to be a danger to the physical safety of self or others because of mental illness, s/he can be evaluated for commitment by the crisis team serving the area.

To be committed to a hospital against his or her will, two mental health professionals have to certify that the defendant:

- Has a mental illness; and
- Poses immediate, substantial likelihood of serious harm to self or others; and
- Needs care, training and/or treatment; and
- All less drastic placements will not meet the needs of the person.
- Most people are not committed for a long period of time, but they may get stabilized on medications and connected to services when they are released.

**You Can Help** the defendant get mental health treatment:

- Give the defense attorney contact information for the defendant's mental health providers;
- Give the attorney the release form used by the agency or other treating professional;
- Highlight the importance of continuing the defendant's medication;
- Ask for a criminal justice/ mental health liaison. Not all jails have one. If there is one in the jail, that person will be able to help the defendant get assessment, treatment and will connect him or her to supports and services upon release;
- Call the mental health agency to get the defendant evaluated for mental health treatment. If the person is not in jail, help him or her sign up for TennCare;
- Write down details if the defendant has been seriously threatening to self or others, or is unable to take care of himself or herself because of mental illness. Give the date, time, place and exactly what happened. Give that information to the defense attorney.

## Sentences

### Pre-Sentencing Investigation

The judge may order a pre-sentence investigation (PSI):

- If the defendant is to be sentenced because of a guilty or nolo contendere plea, or
- Was convicted (found guilty) at a trial.

A probation officer will gather information. The judge will decide what sentence to give the defendant. The PSI report will include:

- A statement of the facts of the case;
- The defendant's criminal record;
- Family background;
- Employment history;
- Maybe a mental health assessment; and
- Perhaps a statement from the defendant.

### Sentencing Hearing

This is a court hearing where the judge will look at the PSI report and hear other testimony. The defendant and defense attorney should prepare carefully for the sentencing hearing by discussing who should testify on behalf of the defendant and what they should say. A sentence is what the judge requires the defendant to do to make up for the crime. Sentences can mean:

- Paying a fine;
- Serving time on probation or community corrections;
- Serving time in a jail or prison;
- Serving a "split sentence", some time behind bars and some on probation.

### *How to Help* prepare for the sentencing hearing:

- Tell the defense attorney about:
  - Treatment or training programs the defendant has completed;
  - People who can vouch for the defendant;
  - Who depends on the defendant (sick or aging parents, dependent children, etc.).
- Follow the advice of the defense attorney.

### **Probation**

Probation is a sentence. It is a privilege, not a right. A probationer must live by certain rules to stay out of jail. Time served on probation starts when the defendant is released from jail. When a defendant is placed on probation, the judge may make several conditions:

- Report regularly to the probation officer;
- Ask permission from the probation officer before changing address, job, or traveling out of state;
- Going to mental health, alcohol or drug treatment;
- Getting a G.E.D.;
- Keeping a full-time job;
- Paying back money to the victims (called “restitution”); and
- Not committing any more crimes.

People on probation must pay \$35.00 per month, or an amount set by the judge, to the probation officer. If the defendant does not obey the rules of probation, a hearing will be held, and the judge may “revoke” the probation and send the defendant to jail to serve the whole sentence.

### *You Can Help* with probation, community corrections and parole:

- Talk to the defendant and the defense attorney about getting sentenced to probation with a requirement of treatment.
- Make contact with the probation or parole officer before there is a problem. Probation and parole officers have high caseloads. Most do not know much about mental illness.
  - Get the defendant’s permission, then call and introduce yourself;
  - By making contact early:
    - The officer will be more likely to call you if there seems to be a problem;
    - The officer will listen to you if you need to advocate for the defendant later.
  - Give information on the defendant’s mental illness and things that are hard for the defendant to do because of mental illness.
  - Give information about the defendant’s treatment providers and tell the officer what the programs offer.
  - Tell the officer what you can and cannot do for the defendant. That way the officer will not call you for something you can’t help with.

### **Community Corrections**

In Tennessee, people who do not qualify for probation may still be sentenced to community corrections to pay back the community for the crime. A community corrections probation officer will develop a sentencing plan for the judge. At the sentencing hearing the judge will give the defendant a length of time during which the plan must be followed. The plan may include:

- Public service work;
- Paying money to the victim, (restitution);
- Reporting to the probation officer every day;
- Going through mental health treatment and/or drug and alcohol treatment;
- Anything else the judge feels will keep the defendant from breaking the law again.

The defendant should discuss community corrections with the defense attorney before applying because the conditions are strict.

## **Split Confinement**

The judge may sentence the defendant to some jail time and some time on probation. If the defendant violates probation, he or she will be thrown in jail for the rest of the sentence. This is called “putting the sentence into effect.”

## **Work Release** *(only in some counties)*

If the defendant is employed, misdemeanor time may be served at a Work Release Center where the defendant can go to work during the day.

- To get work release, the defense attorney will need to get a sentence that allows for 0% work release eligibility, meaning that the defendant can apply immediately.
- If the sentence is less than 120 days, the application will go to the director of the work release program.
- If it is longer than 120 days, the defendant must go before the Work Release Board.

The work release decision usually takes only a few days.

## **Jail**

People who serve time for misdemeanors are sent to county jails or workhouses. The maximum sentence for a misdemeanor is 11 months and 29 days (11/29). A charge will carry a range of sentences with it. If the defendant is incarcerated in jail for 11/29 at 75% the defendant serves that portion sentence. People who have done more serious crimes will serve time in jail until they go to prison. The time served in jail counts toward the prison sentence.

Most jails do not have much mental health treatment.

- Larger jails have staff that assess for mental illness and prescribe medication.
- Small jails may have little or no treatment. If they do have treatment, usually it is only assessment and medication through a community mental health center. It takes awhile to get community treatment for inmates because waiting lists are long and the jail staff has to find the time to take inmates to appointments.
- Some jails have a criminal justice/mental health liaison. This is a person who can help the inmate get services and supports in jail and upon release;
- Some jails have Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) groups and substance abuse counselors. The court may shorten the sentence if the defendant goes to substance abuse treatment while in jail.
- Larger jails may have special cells or a unit where people with medical or mental health needs are housed apart from other inmates. Mentally ill inmates in those units are less likely to be picked on by other inmates.

## **Prison**

Inmates with sentences of six years or more serve time in one of the state prisons. The defendant may be incarcerated close to home, or may be sent somewhere else in the state. Inmates serving less than six years go to jail.

- How much time the inmate actually serves depends on the crime, the defendant's criminal record and behavior while locked up.
- Those who do not break the rules, and are involved in programs, may shorten their time. Time served in jail while waiting to get to prison can shorten the prison sentence if the defendant behaves well.
- If the defendant gets in trouble in prison, he may get a “disciplinary” which means extra time served over and above the sentence.

Prisons are required to have some mental health treatment. Every inmate who comes into a prison is examined for mental health, substance abuse or health problems. At any point, prisoners, family or others, can ask that the inmate be examined to see if there is a need for mental health or substance abuse services.

- If there seems to be a mental health problem, the person will be sent to the prison physician, psychologist or other counselor for testing, diagnosis and treatment.
- The physician may prescribe psychiatric medication to be given by the prison nurse.
- If the inmate is already on medication, the physician may continue it if the medication is on the prison drug list, or may change it. If there is a good reason, like the inmate has tried everything and nothing else worked, the medication may stay the same even if it is not on the prison drug list.
- The prisoner has a right to refuse to take the medication. But if the inmate becomes a serious threat to himself or herself, emergency medications will be ordered through the Department of Corrections with or without the inmate's consent.
- At most prisons, mental health treatment is like it would be at a community mental health center. There is a clinic in the prison where inmates go for treatment.
- At special needs prisons, treatment is similar to a state mental health institute. Special needs prisons are for people with serious mental illness or mental retardation who need special services and would be safer if they are separated from other inmates.
- If there seems to be a drug or alcohol problem, the inmate will be sent to the substance abuse counselor for drug education, treatment and group work. Substance abuse treatment in prisons is similar to substance abuse treatment agency in the community.

#### *You Can Help* someone who is incarcerated:

- Visit the inmate in prison or jail; write letters and telephone. Inmates who have someone on the outside that cares are more likely to go to treatment and rehabilitation, and to stay out of trouble while in prison. Make sure you follow the prison rules;
- Ask the prison to examine the inmate for mental health or substance abuse problems;
- With the inmate's permission, tell the prison medical staff what treatment and medication the inmate has been receiving and how well it helped or did not help;
- Encourage the inmate to go to treatment and take medication as prescribed;
- If the inmate complains about his or her treatment remember there are two sides to every story. Check it out with the prison mental health staff before you do anything else;
- Encourage the inmate to get his or her GED or to go to training while in prison. Having more skills will help after release;
- Advocate for release planning. The prison staff is busy and may not have the time to follow up on everything that needs to be done. Four months before the inmate's release date, help the staff plan where the inmate will stay, what he or she will do, how the inmate will get income and treatment. Make sure referrals are made to mental health providers in the community. Advocate with community mental health providers to arrange housing, income and appropriate treatment. Apply for TennCare to pay for treatment when the inmate is released.
- Call, or write to the mental health center and ask for an intake appointment for the inmate. If you write a letter, ask for a written reply.

It is very hard to get set up in the community after release from prison. Landlords, even in public housing, may not rent to a person who has been in prison. Few employers will hire people who have been convicted of felonies. The inmate who has enough support in the community to make it through tough times is much more likely to stay out of prison in the future.

## **Parole**

Parole is supervision of someone who has returned to the community after serving part of a felony sentence in prison. Parolees must report to the parole officer and obey certain conditions. If the parolee disobeys any of the conditions, the parole officer can arrest him or her immediately. The parolee will go to jail to wait for a hearing whether or not the rules were violated. If parole was violated, the parolee will be sent back to jail or prison. Conditions of parole may include:

- Reporting regularly to the parole officer for a set length of time;
- Staying within a certain county or area;
- Staying away from certain people;
- Going to mental health and substance abuse treatment;
- Getting stable housing and work; and
- Not committing crimes.

## **Conclusion**

It can be confusing and frustrating to try to get help in the criminal justice system for someone with mental illness. Your task will be easier if you find someone who can tell you what is happening and how you can be of the most help. You may receive some help from the defense attorney but if not, do not give up.

For information and support call your local office of the National Alliance for the Mentally Ill (NAMI) or the toll-free NAMI Tennessee help line at (800) 467-3589. NAMI is a self-help organization of family, friends and people with mental illness. You may also be able to get help through your local Mental Health Association. To contact these and other helpful organizations, look in the Resources section of this book.

## **What can we do to de-criminalize mental illness?**

People with mental illness do not belong in jail or prison because of their mental illness. It makes a lot of trouble for people who are already having a hard time, and it is a waste of time and money. Many of the “crimes” that get people with mental illness into jail or prison would be viewed as “symptoms” if we had enough mental health services. Everyone who cares about mental health must work together to stop criminalization and demand a real community mental health system, regardless of whether someone you care about has been arrested.

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This book was inspired by two documents:

- Take This Book: a defendant and family handbook provided by the Davidson County Office of the Public Defender; and
- How to Help: when a person with mental illness has been arrested, (2001) by Heather Barr of the Urban Justice Institute and Bob Corliss of NAMI-New York City.



## Helpful Websites

### **Criminal Justice Information:**

Directory of TN Sheriffs, Public Defenders & Judges:

[www.tbi.state.tn.us/CJ\\_directory](http://www.tbi.state.tn.us/CJ_directory)

Tennessee Department of Correction:

*Information about state prisons*

[www.state.tn.us/correction](http://www.state.tn.us/correction)

Tennessee Criminal Law:

*Information about legal issues in Tennessee*

[www.tncrimlaw.com](http://www.tncrimlaw.com)

Tennessee Administrative Office of the Courts:

*Information about the Tennessee court system*

<http://www.tsc.state.tn.us>

Tennessee Board of Probation and Parole

[www2.state.tn.us/bopp](http://www2.state.tn.us/bopp)

### **Police:**

Chattanooga

Jackson

Knoxville

Memphis

Nashville

[www.chattanooga.gov/police](http://www.chattanooga.gov/police)

[www.jacksontn.com/jackson/police.html](http://www.jacksontn.com/jackson/police.html)

[www.knoxvillepd.org](http://www.knoxvillepd.org)

[www.memphispolice.org](http://www.memphispolice.org)

[www.police.nashville.org](http://www.police.nashville.org)

### **Mental Health Information:**

Directory of mental health services in Tennessee:

[www.state.tn.us/mental/reslinks.html](http://www.state.tn.us/mental/reslinks.html)

The Bazelon Center for Mental Health Law:

*Information about mental health law and rights of persons with mental illness*

[www.bazelon.org](http://www.bazelon.org)

The Consensus Project

*Information about bridging gaps between the mental health and criminal justice systems*

[www.consensusproject.org](http://www.consensusproject.org)

The Institute of Mental Health Law:

*Information about mental health legislation around the world*

[www.imhl.com](http://www.imhl.com)

Mental Health Association of Middle Tennessee

[www.ichope.com](http://www.ichope.com)

National Mental Health Association

*Information about mental health issues*

[www.nmha.org](http://www.nmha.org)

National Alliance for the Mentally Ill (NAMI)

*Information about mental health issues and treatment*

[www.NAMI.org](http://www.NAMI.org)

National Alliance for the Mentally Ill of Tennessee

<http://tn.nami.org>

National Association of Rights Protection and Advocacy (NARPA)

*National organization to advocate for civil rights of persons with mental illness*

[www.narpa.org](http://www.narpa.org)

Substance Abuse & Mental Health Services Administration (SAMHSA)

SAMHSA Center for Mental Health Services information site:

[www.samhsa.gov](http://www.samhsa.gov)

[www.mentalhealth.org](http://www.mentalhealth.org)

Tennessee Dept. of Mental Health/Developmental Disabilities:

[www.state.tn.us/mental](http://www.state.tn.us/mental)

Tennessee Association of Mental Health Organizations:

*Statewide organization of community mental health centers*

[www.tamho.org](http://www.tamho.org)



Criminal Justice System in Tennessee

This diagram shows general information. Systems vary between counties.

